

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

Tylus Allen Jr.,	)	
	)	
Plaintiff,	)	
	)	Case No.: 19CV-7904
vs.	)	
	)	Honorable Franklin U. Valderrama
Village of Oak Lawn Police Detective S.	)	
Heilig, M. McNeela, Sgt. S. Sucharzewski,	)	Magistrate Judge Heather K.
CMDR. P. Barron, unknown and unnamed	)	McShain
Village of Oak Lawn Police Officers, City of	)	
Burbank Officer Tudryn, the Village of Oak	)	
Lawn, and Mitchell Lorenz, M.D., Laura	)	
Napier, M.D., Advocate Health and Hospitals	)	
Corporation, an Illinois Not-for-Profit	)	
Organization d/b/a Advocate Christ Medical	)	
Center	)	
	)	
Defendants.	)	

**DEFENDANT’S MOTION TO DISMISS COUNT IV OF PLAINTIFF’S  
FIRST AMENDED COMPLAINT**

Now come Defendants, Mitchell Lorenz, M.D., Laura Napier, M.D., and Advocate Health and Hospitals Corporation, an Illinois Not-For-Profit Organization d/b/a Advocate Christ Medical Center, by and through their attorneys, Ruff, Freud, Breems & Nelson, Ltd., and file their Motion to Dismiss Count IV of plaintiff’s First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), and state as follows:

1. Plaintiff filed his original complaint in this matter some time in 2019. That Complaint did not make any allegations against these moving defendants,

however.

2. Plaintiff filed his First Amended Complaint on December 15, 2020, adding the moving defendants, Dr. Napier, Dr. Lorenz and Christ Medical Center, as defendants and asserting, for the first time, a supplemental state law claim of Battery against them based on Illinois law. (A copy of that First Amended Complaint is attached as Exhibit 1.) The plaintiff's battery claim is predicated on a medical exam which was conducted by Dr. Lorenz.
3. The First Amended Complaint alleges that the complained-of battery occurred during an emergency room visit by the plaintiff to Christ Medical Center "on or about December 2, 2018," a date more than two years prior to the filing of the plaintiff's First Amended Complaint. This occurrence was more than two years prior to the filing of any allegation or claim against the three moving defendants.
4. All of plaintiff's claims against these moving Defendants are contained in Count IV. Paragraphs 52 through 55 of the First Amended Complaint allege that Defendant Dr. Lorenz, under the supervision of Defendant Dr. Napier and as an employee of the Defendant Medical Center, committed "an unauthorized and offensive touching of the plaintiff" which "constitutes a battery under Illinois law." That touching was a digital rectal examination of the plaintiff.
5. Pursuant to the Illinois Law, any cause of action brought against a physician or hospital, arising out of patient care, including the present claim of Battery, must be brought within two years of the date the cause of action accrued. 735 ILCS

5/13-212. The First Amended Complaint asserts on its face that that this cause of action accrued more than two years before it was filed with this court.

6. Because Plaintiff filed his cause of action against these Defendants more than two years after the accrual of his claim, Count IV of Plaintiffs' First Amended Complaint is time barred by the applicable statute of limitations and therefore must be dismissed with prejudice. Heredia v. O'Brien, 2015 Ill. App. (1<sup>st</sup>) 141952 (2015).

WHEREFORE, Defendants, Mitchell Lorenz, M.D., Laura Napier, M.D., and Advocate Health and Hospitals Corporation, and Illinois Not-For-Profit Organization d/b/a Advocate Christ Medical Center, move this Court to dismiss Count IV of plaintiffs' First Amended Complaint with prejudice and for such other relief as this Court deems just and equitable.

Respectfully submitted,

/s/ Scott Nelson

By: \_\_\_\_\_  
One of their attorneys

RUFF, FREUD, BREEMS & NELSON LTD.  
200 N. LaSalle St., Suite 2020  
Chicago, IL 60601  
312-263-3890  
312-263-1345 fax  
Attorney no. 90713  
[snelson@rfbnlaw.com](mailto:snelson@rfbnlaw.com)